

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDRES GARCIA,

Plaintiff,

v.

Civ. No. 08-279 MV/WDS

GARY TAFOYA, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Motion of Defendants Rio Rancho Public School District, Board of Education of Rio Rancho Public School District, Gerard Hyatt, Richard Vonancken, Patricia Divasto and Sue Cleveland (“School District Defendants”) for Summary Judgment on Counts I, II, III and IV of Plaintiff’s Complaint and for Qualified Immunity (Doc. No. 78, filed January 21, 2009), the School District Defendants’ Motion for Summary Judgment as to Count VI of Plaintiff’s Complaint (Doc. No. 80, filed January 21, 2009), Plaintiff’s Sealed Unopposed Motion to Extend time to Respond to Document 83 until February 15, 2009, and Documents 78 and 80 until February 20, 2009 (Doc. No. 90, filed February 12, 2009), and Defendants Barela, Prater, Parker and CYFD’s (“CYFD Defendants”) Motion for Summary Judgment based on Qualified Immunity and Other Grounds (Doc. 102, filed February 25, 2009). For the reasons stated below, the Court will **DENY** the Motions for Summary Judgment (Doc. Nos. 78, 80 and 102) without prejudice and will **DENY** the Motion for an extension of time to respond (Doc. No. 90) as moot.

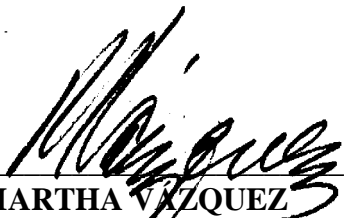
The School District Defendants filed two motions for summary judgment on January 21, 2009. The CYFD Defendants filed a motion for summary judgment on February 25, 2009. Plaintiff subsequently filed an Amended Complaint (Doc. No. 112, filed March 11, 2009). (*See Order*

granting Plaintiff's motion to amend complaint, Doc. No. 110, filed March 11, 2009).

A "pleading that has been amended under Rule 15(a) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified." *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990). Because they relate to the original complaint, the Court will deny without prejudice the motions for summary judgment filed by the School District Defendants and the CYFD Defendants. The School District Defendants and the CYFD Defendants may file motions for summary judgment relating to the Amended Complaint.

IT IS SO ORDERED.

Dated this 15th day of May, 2009.



MARTHA VALQUEZ
CHIEF UNITED STATES DISTRICT JUDGE

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